

Hadu Vs. the State

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Court : Orissa

Decided On : Aug-09-1950

Reported in : AIR1951Ori53

Judge : Jagannadhadas and ;Panigrahi, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 300; [Evidence Act, 1872](#) - Sections 6, 8, 106 and 133

Appeal No. : Criminal Appeal No. 7 of 1950

Appellant : Hadu

Respondent : The State

Advocate for Def. : B.M. Patnaik, Adv. for ;Adv. General

Advocate for Pet/Ap. : B.N. Rath, Adv.

Disposition : Appeal allowed

Judgement :

Jagannadhadas, J.

1. The appellant before us has been convicted under Sections 302 and 201, Penal Code, and sentenced to transportation for life under first count and to rigorous imprisonment for five years under the second count the sentences to run

concurrently. He has been held guilty of having murdered one Bhima Panda on the night of 19-5-1949 and caused the disappearance of the dead body from the scene of the offence with the intention of screening himself. At the trial, there was another accused, A-2, the brother of the appellant but he has been given the benefit of doubt by the learned Sessions Judge and acquitted.

2. The appellant Hadu Samanta is a resident of Humma Gada. The deceased Bhima Panda is a resident of the village Nadapandapalli, some distance away. The evidence on the side of the prosecution shows that the appellant and the deceased were on friendly terms and that the deceased was placing implicit confidence in the appellant. The appellant had taken a lot of gold and money from the deceased under the inducement that he would teach him some vidya whereby he could get gold and that he would perform a homa which would, bring out to him golden pots from the earth. It is in evidence of the wife of the deceased, P. W. 18, that the deceased sold away his lands and the gold and silver ornaments on the person of his wife and his daughter and had given in all about Rs. 3000 to the appellant in the course of about two years prior to the date of the alleged occurrence, and that her husband used to go to the house of the appellant frequently to demand gold from Hadu and was being put off. It is also her evidence that her daughter grew into marriageable age and that the deceased accordingly pressed the appellant for return of his money in order to be able to perform the marriage of his daughter. This evidence of the wife of the deceased, P. W. 13, is substantially corroborated by her brother, P. W. 1. '

3. According to the prosecution case, the deceased went to the house of the appellant for the last time for demanding money 8 days prior to his death. On the day of the occurrence, he was returning to his village, but on the way by the time he arrived at the village called Borada, he felt suffering from some ailment and started belching and vomiting in front of the * house of one Natia Panda, P. W. 5. P. W. 5 sent word to one Govinda Panda, nephew of the deceased who was running a tea-shop at a place called Munshipenta on the other side of the river which adjoined the village Borada. On the arrival of Govinda Panda, the deceased wanted to go back to the house of the appellant, presumably because he thought that his ailment was the result of some medicine which, according to him, he had

taken at the house of the appellant, and wanted to take his advice for getting rid of the trouble. P. W. 6 was persuaded to take the deceased back to the village of the appellant for hire. According to his evidence, he took the deceased on a cart from Borada to Gada Humma and arrived there at about sun set time, He stopped in front of a house whose owner he could not identify. The owner was not there at the time and the deceased got out of the cart and sat in front of the house waiting for the arrival of the owner, coughing, belching and spitting all the time. The owner arrived at about 2 ghadis after sun set and Bhima Panda said to the owner:

'What medicine you gave me. I become restless. I could not go to my village, so I returned. I shall remain with you.'

The owner told him: 'All right.' Thus saying he took him inside his house. The owner while taking the deceased inside his house asked P. W. 5 to wait to take him back. But the deceased refused to go back and accordingly P. W. 5 returned back to his village with the cart.

4. Information that the deceased felt unwell while he was returning back to his village was sent by Govind Panda to the wife of the deceased, P. W. 13, on that very day. P. W. 13 accordingly went to Humma Gada early next morning, that is on 20th, and went straight to the house of the appellant. But she did not find him there. She found, however, his brother, A-2, who on enquiry told her that her husband was at the house till midnight, but that he did not know anything further about him as he himself had gone away to Rambha. She thereupon felt suspicious and went to the Karan of the place, P. W. 2 who also sent for the Karji, P. W. 8. They all went to the house of the appellant and she there made a statement, Ex. 2, in which she reported the fact that her husband was missing and that she suspected foul play by the appellant and made mention of the pre-existing background of the relations between her husband and the appellant. The village officers had some search made for the deceased in the village and by about 1 P. M. got news that a dead body, was lying near a tank in the village. The wife of the deceased immediately went to the place and recognised the dead body as that of her husband. The matter was reported to the police by the Karji, P. W. 8, as per Ex. 6. There was the usual inquest and post mortem examination of the dead

body. The post mortem report Ex. 3 and the evidence of the doctor, P. W. 4, shows that the deceased had on his body six injuries, namely, one contused wound on the left side of the face and head, one bruise with haematoma on the left side of the head and face, one bruise with haematoma on the left side of the neck. One bruise with haematoma on the front of the chest mainly on the left side, one echymosis on the left eye-brow and a bruise on the left skin. On dissection it was found that the muscles were found severely contused and there was lacerated blood clot throughout musculature. The lower jaw had broken into small pieces and also the greater part of the ramus of the same bone. The superficial artery was macerated on the left side of the neck and there were other internal injuries. The doctor was of the opinion that all the injuries were ante mortem and that the death of the person was probably due to the combined effect of the injuries on the neck, face and chest. The prosecution case as above stated is spoken to by P. Ws. 13, 2, 8, and 4. There can be no reasonable doubt that the deceased came back to the house of the appellant on the evening of 19.5-1949 and that he was not there early morning of the 20th when his wife, P. W. 13, came and made inquiries for him. These facts are clearly made out by the evidence of P. W. 5 and P.W. 13. That the deceased was inside the house of the appellant for some considerable time on the night of 19-5-1949, is also amply made out by the prosecution evidence. P. W. 3, an Inamdar in the village and a close neighbour of the appellant, says that he saw the deceased being brought to the house of the appellant by a cart-man in a retching and vomiting condition at a time when the appellant was not in the house ; that the appellant returned to his house at about 6 P. M. and that he heard the sound of retching and vomiting of the deceased from inside the house of the appellant till about 10 p. M. when he went to his bed. He no doubt admits in cross-examination that he did not himself see Bhima Panda on that occasion, but says that from the sound of the retching and vomiting, which he was hearing, he was able to recognise that it was Bhima Panda, presumably because according to his evidence, he knew the deceased as he was frequenting the appellant's house fairly often. P. W. 9 gives evidence that he went out from his house to the village shop to make purchases by about 8 P.M., that when on his way he passed the house of the appellant, he heard belching sound from inside the house of the appellant both when going to the shop and returning from the

shop. P. W. 10 gives evidence that on that day at about 6 P. M. when he was going to the tank, he saw a person coming towards Humagada on a cart and that on his return journey he saw the cart standing at the door of the appellant and saw a man lying on the cart vomiting and making vomiting noise. P. W. 5 himself, the cart-man who brought the deceased from Borada to Hummagada has definitely stated that the deceased was taken inside the house presumably by the appellant. The accused in his statement before the Sessions Court admits that the deceased was brought in a cart to his house that evening when he was not in his house and that when he came to the house, he found the deceased sitting on the verandah vomiting and retching. He further says that he asked him to leave the place fearing that he might have been attacked with cholera and that the deceased thereupon sat on the cart and left his place. In his earlier statement before the committing Magistrate's Court, however, he stated as follows:

'Bhima came to my house on the evening of 19th. He was sitting on the cart and was vomiting. I took him inside my house. At about 8 P. M. in the night, I had gone away to Rambha to see the Jatra. I returned back by about 9 or 10 next morning. By the time, I returned, Bhima Panda, was not in my house.'

In view of this categorical admission in the committing Magistrate's Court, it is clear that his present statement in the trial Court that he sent back the deceased immediately on seeing him by the very cart on which he came fearing that he might have been attacked by cholera is an after-thought and is false. The evidence of P. W. 5 definitely contradicts this. Further as appears from the evidence of P. W. 18, the second accused, the brother of the appellant had stated to her the next morning that Bhima Panda the deceased was inside the house until about 12 P. M. in the night when he left for Rambha for the Jatra. It must therefore be taken as conclusively established that Bhima Panda was in the house of the appellant on the night of the 19th for some considerable time.

5. There can also be no reasonable doubt on the medical evidence of P. W. & and Ex. 3 that the deceased met with his death as a result of serious injuries inflicted on him. Learned counsel for the appellant argued that the effective cause of the death may not have been the injuries received by the deceased in the murderous

assault but only poisoning. The basis for this suggestion is the fact that on dissection in the course of the post mortem examination, the viscera of the dead body had been taken out and sent for chemical analysis and that as appears from the report, Ex. 18, atropin, the active principle of Belladonna and Dhatura had been detected in the viscera. Learned counsel for the appellant points out that on the evidence it is clear that the deceased had a lot of vomiting and retching prior to his death. He suggests that it must have been the effect of Dhatura poisoning. While this may be so, there is absolutely no indication in the evidence that such poisoning was the effective cause of the death in this case. None of the usual results of such poisoning on the internal organs of the body have been found on dissection as is clear from the post mortem certificate. The doctor has not been asked whether the death was likely to have been the result of poisoning. He is clear and definite that the deceased died as a result of the injuries received. There is therefore no room for speculation. Some faint suggestion has also been made that the deceased may have died as a result of a jackal bite. The foundation for this suggestion is a statement in Ex. 2, the report said to have been given by P. W. 13 to the village officers. In her evidence, however, she denied that her husband had been bitten by a mad jackal. There is therefore no proof of the same. It is clear beyond doubt that the deceased died as the result of a murderous assault.

6. It is also beyond any doubt that the deceased met with his death in the village of the accused at some time before 1 p. M. on 20th since his dead body was found by the side of the village tank at 1 P. M, The only question is at whose hands did he meet with his death.

7. There is admittedly no eye-witness to the murder. The prosecution seeks to bring home to the accused the offence of murder by relying on the circumstances. It is necessary therefore in the first instance to see what are the circumstances proved. There is the fact that the deceased was in the house of the accused on the night of the 19th some hours prior to the find, at 1 P. M. the next day, of the dead body of the deceased within a distance of probably less than a mile from his house. There is the further fact of the pressing demands of the deceased against the appellant, shortly prior to the occurrence, for the return of his money to enable him to perform his daughter's marriage, which might render it not unlikely that the

appellant might have wished to do away with the deceased. A few other circumstances have also been brought out in the prosecution evidence some of which appear to be of no consequence. The Sub-Inspector of Police, P. W. 15, in a search of the house of the appellant on 26th recovered from the room in his occupation, one blood-stained lungi, Ex. 5, one blood-stained gamuchha, Ex. 6, two stones, Exs. 1 and I-A and one grinding stone, Ex. 7, one door-plank, Ex. 2 and a clod of earth from his wall, Ex. 8. The Chemical Examiner has certified that Exs. 5, 6, 7 and 8 had stains of blood and sent them up to the Serologist for test as to the origin of the blood. The Serologist's report shows that the blood stains had disintegrated and their origin could not be detected. No significance therefore attaches at all to the find of these articles on seizure, especially having regard to the fact that the seizure was as late as nearly a week after the alleged occurrence. It further appears from the evidence of the Sub-Inspector, P. W. 15 that on 29 5-1949, he seized a cart lying by the side of the road near the house of one Dinabandhu Raja, a brother-in-law of the appellant. He found some blood stains on it and according to his evidence there was no other cart in the village. The blood has not been certified to be human blood and it is impossible to attach any value to this evidence especially having regard to the facts that the seizure is ten days after the occurrence.

8. The most important incriminating circumstance however on which the prosecution relies is this. It is in the evidence of P. W. 6, a resident of Raghunthpor, a village about a mile from Hummagada, that on 19th, he had taken cart-load of fruit on hire from his village to Pratappur, Jaleswar Khandi, and that on his return there from, by about 10 P. M., he passed through Humagada village. As he was coming in his cart, he found a cart standing at the door of the accused on the road with bullocks unyoked and tied to the cart. The cart was blocking his way and he accordingly asked the man, standing by to shift the cart a little to allow his cart to pass. That person asked him to take the cart. by the side way as a dead body has been loaded on it. Out of fear he left the place. Ha says in chief examination that as a matter of fact he saw a dead body on the cart, but in cross-examination he explains that he found a man lying in the cart and took it to be a dead body when the man standing near the cart told him that it was a dead body. It was a dark night though, there was visibility. He saw the appellant and his

brother sitting on the verandah of their house at the time, but that he cannot recognise the person standing near that cart. If this evidence can be taken as proving that a dead body was actually in front of the house of the accused on a cart the night of 19th at about 10 P. M., it undoubtedly leads to a reasonable inference that there was a death within the house of the accused that night to the knowledge of the appellant and this would be a very strong circumstance against the accused. Learned counsel for the appellant urges that this evidence is not admissible since what is proved is only the hearsay of some unidentified person on the basis of which this P. W. 6, believed that he saw a dead body at the time. He also urges that what P. W. 6, may have seen was only the cart in which the deceased was brought by P. W. 5 at the time when he was waiting for the arrival of the accused and just at the time when the accused had come. There is however no room for thinking that the cart which P. W. 6, saw, was the cart of P. W. 5, P. W. 6, says that the cart which he saw was an open cart while it is in the evidence of P. W. 3 that the cart on which the deceased was first brought to the house of the accused was a cart with a Doli in which the deceased at that time was lying. Furthermore, according to the evidence of P. W. 5 he left the deceased inside the house of the accused by about two Gadhias as after sunset which he puts at 8 P. M. and left the village presumably with the cart, but according to the evidence of P. W. 6, he saw the cart on which a body was lying in front of the house of the accused at about 9 or 10 P. M. on the night. Though the exact time to which these witnesses speak may not be accurate, it does not appear likely from the evidence that P. W. 6 refers to the same point of time at which P. W. 6 was still waiting in front of the house of the accused. It must therefore be taken that what P. W. 6 speaks to, is not the cart of P. W. 5 at the time when he brought the deceased to the house of the appellant. One remarkable matter in this connection may be noticed. The accused when asked in the Sessions Court 'Have you heard the evidence of P. W. 6? What have you to say to it 'answers' Yes, he went past my house at 8 P. M. while Bhima Panda was on the cart alive,' This taken in connection with his other answer in the Sessions Court that he sent back the deceased on the very cart of P. W. 5 fearing that he was attacked with cholera without taking him inside the house may be taken to mean that according to him, P. W. 6 saw him only when the deceased was on the cart of P. W. 5. But as

already pointed out above, the defence of the accused that the deceased was sent back immediately on the same cart and was not taken inside his house is clearly false, and the evidence shows as above stated that what P. W. 6 saw was not the cart of P. W. 5. The above quoted answer of the accused however clearly shows that P. W. 6 has stated the truth when he deposed that he saw a cart with a body lying on it in front of the accused's house, P. W. 6 has not; recognised the body as that of Bhima Panda, but this gap has been supplied by the accused himself in his answer, The question still remains whether what P. W. 6 say at the time was Bhima Panda alive or already dead. This depends entirely on the admissibility of the statement made by the unidentified person standing by the side of the cart to P. W. 6 to the effect that there is a dead body on the cart and offering it as a reason for taking P. W. 6's cart away by another route. The learned Sessions Judge while noticing that this statement may not be admissible being hearsay, thinks that the person who made the statement must be treated as an accomplice and that the statement is therefore admissible on that ground. The learned Judge is obviously wrong in this view. Though no doubt the unidentified person was in charge of the cart on which the dead body was found which according to his own statement was a dead body, there is no material on which it can be said that he was aware that the death was the result of a crime and that he was therefore participating in the offence of screening the evidence of the crime. It cannot therefore be assumed that the unidentified person is an accomplice. But even if he is, his statement cannot be evidence without his being examined in Court. The learned Judge obviously makes a confusion between an accomplice and a co-accused. The statement of a co-accused may be admissible in certain circumstances, though not examined, but not that of an accomplice, who is available to be examined. It may no doubt be taken to have been proved from the evidence of P. W. 6 that an unidentified person stated to him that there was a dead body on the cart and that P. W. 6 believed it to be so. But this obviously is not enough unless the statement of the unidentified person is admissible as substantive evidence to prove the existence of the dead body itself at the time. The learned Government Advocate very strongly urged that it is admissible on the principle of the admissibility of *res gestae* falling within Schedule , Evidence Act. He also says that since the statement was made while, according to the evidence

of P. W. 6 the accused and his brother were sitting on the verandah, it would be admissible under Schedule . The argument based on Schedule , can be summarily disposed of. What is in evidence is only that at the time when the statement was made, the appellant was on the verandah. There is no proof as to what was his reaction when he heard it or if he heard it at all. What is admissible under Schedule is the conduct of, the appellant, and the statement which effected or influenced that conduct. Though silence may in certain circumstances, amount to conduct. there is no proof even of a positive silence which' may conceivably be taken to be conduct. There is therefore no basis for the argument that the statement is admissible Under Section 8.

9. What therefore has to be considered is whether the statement is admissible under Schedule Evidence Act, which runs as follows :

'Facts which, though not in issue, are so connected with a fact in issue as to form part of the same transaction, are relevant, whether they occurred at the same time and place or at different times and places.'

The argument strongly urged by the learned Government Advocate is that on the assumption that the murder may have taken place in the house of the appellant and that the body was disposed of by carrying the dead body on a cart and throwing it away at or about the place where it was ultimately found, the whole of the series of events from the murderous assault to the throwing away of the dead body constituted one transaction and that the statement of the unidentified person spoken to by P. W. 6 was part of that series of events and that the said statement being a spontaneous reaction to the request of P.W. 6 for removing the cart from his way is admissible. He relies not only on Schedule , but also on the illustration 'A' thereto, to show that spontaneous statements in the course of the transaction are admissible, as being *res gestae*, The learned Government Advocate referred us to authorities from text books on the principle of *res gestae*. The term '*res gestae*' is not used in the Evidence Act and the use of that term as indicating any well-defined and intelligible principle has been strongly criticised by learned authors on Evidence like Phipson and Wigmore. They point out that it has. been responsible more for confusion than for any clear definition. It also appears from -

the text books that the rule relating to res gestae has been differently understood and applied in English Law and in American Law. It is not therefore helpful to try to determine the admissibility of the statement in question by any elaborate reference to either the American Law or the English Law. We must only turn to Schedule , Evidence Act. Illustration 'A' to Section 6 no doubt has indicated that the spontaneous statement of a bystander who sees the commission of murder is admissible. From this it cannot be deduced as is contended that all spontaneous statements in some way connected with the transaction under investigation are admissible. According to Schedule what is admissible is a fact which is connected with the fact in issue as 'part of the transaction.'

'A transaction may consist of a single incident occupying a few minutes or it may be spread over a variety of facts etc. Occupying a much longer time and occurring on different occasions or at different places'.

(See Sircar on Evidence, p. 54). Where the transaction consists of different acts, in order that the chain of such acts may constitute the same transaction, they must be connected together by proximity of time, proximity or unity of place, continuity of action and community of purpose or design. (See *Amrita Lal v. Emperor*, A. I.R. (8) 1916 Cal. 188 at p. 196 : (16 Cr. L. J. 497). Hearsay statements to be admissible as substantive evidence of the truth [of the facts stated therein must themselves be 'part of the transaction' and not merely uttered in the course of the transaction. Where the transaction is a single incident, a statement by a person who was perceiving the incident made simultaneously with the occurrence of the incident, may, with justification, be said to be part of the transaction inasmuch as it is the result of a spontaneous psychological reaction through perception. If 'A' assaults 'B' in the neck with a knife and this is seen by a bystander who exclaims 'A' is killing 'B' the exclamation is as much a part of the transaction of murder as the gushing out of the blood from the wound inflicted on the neck with the only difference that the wound inflicted is a physical reaction to the act and the other is the psychological reaction through perception. While no doubt the spontaneity of the statement is the guarantee of the truth, the reasons for its admissibility under Schedule is that it is a part of the transaction and not merely because it is spontaneous. It must further be noted that the statement as that in III 'A' to S [6?]

is relevant only if it is that of a person who has seen the actual occurrence and who uttered it simultaneously with the incident or so soon thereafter as to make it reasonably certain that the speaker is still under the stress of the excitement caused by his having seen the incident. In the present case, in order that the statement in question may be admissible in evidence as substantive proof of the murder, it is not enough that it has been made spontaneously in the course of the transaction constituted by the murder and the disposal of the dead body, but it must be made out that the person had himself seen the commission of the murder and that the statement was made almost simultaneously with it. There is no indication in this case at all that the unidentified person who made the statement had actually witnessed the murder or that no substantial time had elapsed between the occurrence of the murder and the making of the statement spoken to by P. W. 6, assuming that the murder had already taken place. Nor can the said statement be considered by any stretch of imagination to be a part of the transaction. The statement was made in answer to a request made by P. W. 6 for removing the cart out of the way. It was a statement which arose out of the mere casual accident of P. W. 6 going that way in his cart. Therefore the proximate connection of the statement is not with the murder and the attempt to dispose of the dead body, but with the mere accidental fact of some other cart coming along that way. No kind of connection by way of continuity or community of design or purpose can be traced between the murder or the disposal of the dead body and the statement made. All that can be said is that the statement was made in the course of the transaction, but it cannot be said to be part of it. If statements of that kind arising out of such accidental facts occurring in the course of a chain of events which constitute the transaction are to be treated as part of the transaction and admitted in evidence Under Section 6, it will lead to a serious inroad on the salutary rule prohibiting hearsay evidence. I can see no reason for extension of Schedule to statements of the kind in question in the present case and no authority has been placed before me to justify it. I am therefore of the opinion that the statement of the unidentified person to P. W. 6 at about 10 P. M. that night that there was a dead body in front of the appellant's house is inadmissible in evidence.

10. Ruling out the statement, therefore, the only two circumstances that remain against the appellant are as already stated, (1) the fact that the deceased was with the appellant in his house for some considerable time prior to the finding of the dead body the next day at about a mile from his house, the deceased having gone there in a state of illness. (2) The fact that the appellant might have had a substantial motive to do away with the deceased. To this, may be added the further fact that the accused gives prevaricating explanations in the committing Court and in the Sessions Court as to whether the deceased was with him on the night of 19th and that while he had no explanation to offer in the Committing Magistrate's Court as to how the deceased who admittedly came to his house in a sick condition disappeared by next morning, he gives a false explanation in the Sessions Court that the deceased was never taken into his house but was sent away immediately on the very cart on which he came.

11. I am clear in my mind that the two circumstances stated above, apart from the attitude or explanation of the accused are not by themselves enough to bring home the guilt to the accused. The mere fact that a person has been last seen with the murderer is not by itself enough, unless it appears that he was in the company of the deceased at or about the time when and at the place where the murder appears to have been actually committed. There is no clear indication in this case where and when the murder was committed. As regards the existence of motive, it is well established that the mere existence of motive is by itself not an incriminating circumstance. The only hesitation, I have felt in the case, was whether the false explanations and the prevaricating pleas of the appellant in this case can be treated as an additional circumstance which taken in connection with the other two circumstances can be said to establish the guilt of the accused beyond any reasonable doubt. I have come to the conclusion that in the circumstances of this case, this is not enough and that the accused must be given the benefit of doubt, however grave the suspicion against him may be. The absence of any explanation or a false explanation no doubt is a circumstance that is sometimes relied on to bring home the guilt of the accused in a case depending on circumstantial evidence, on the ground that the facts proving his innocence must be within his special knowledge and that the burden of at least offering a reasonable explanation is on him' on the principle of Section 106, Evidence Act.

But that would be so only in a case where other circumstances proved are so sufficiently strong against him as' to point to him as very probably the culprit and therefore calling for his explanation. If in such a situation the accused gives an explanation which may be reasonably true in the proved circumstances, the accused gets the benefit of doubt, though he may not prove the truth of the explanation. See *Rex v. Schama and Abramovitch*, (1915) 84 L. J. K. b. 396: (112 L. T. 480). But if the accused in Such a case does not give an explanation at all or gives a false explanation, this by itself is a circumstance which may well turn the scale against him. But to infer the guilt of the accused from absence of reasonable explanation in a case where the other circumstances are not by themselves enough to call for his explanation is to relieve the prosecution of its burden. In this case, as I have already pointed out, there is nothing else except the presence of probable motive and the fact that the deceased was in the house of the accused on the previous night. The position might have been different if the medical evidence indicated that the death must have occurred at a time when the deceased was found, on the evidence, to be inside the appellant's house or if any traces of human blood had been discovered inside or in front of his house or on his person or on the articles connected with him and likely to have been used in the murder. But no such facts have been proved in this case. I am, therefore, of the opinion that however grave may be the suspicion against the accused, the guilt cannot be said to have been brought home to him. The appeal must accordingly be allowed and his conviction and sentence must be set aside and he must be acquitted.

12. I may add that one cannot help feeling that if there had been some vigorous investigation in this case, sufficient material connecting the appellant with the crime might probably have been discovered. The death must have taken place some time on the night of 19th and the F. I. B. was lodged in the police station on 20th. The A. S. I. P. W. 14 proceeds to the spot on 21st and holds the inquest and seizes only a gunny bag which is not proved to have any connection with this case. The Sub-Inspector, P. W. 15, arrived on the scene only on 22nd. Even then he did nothing more than searching the house of the appellant in respect of some medicine which he could not find. He apparently misled himself by some theory of poisoning. Neither the A. S. I. nor the Sub-Inspector, looked for the traces of any

murder that may have been committed inside the house of the appellant which they should have done in view of the apparent injuries on the dead body as disclosed from the inquest report, Ex. I. the inquest report shows serious external injuries on the head and the left Side of the face appearing to have been caused by some weapon. In the face of this, it is surprising that the Sub-Inspector waited as appears from his evidence for the receipt of the post mortem report before he made any further attempts to look for traces of blood in and around the house of the appellant. In fact, he actually did search only on 26th having received the post mortem report on 24th, but by then he could find nothing of any consequence. It is also a matter for regret that sufficient efforts do not appear to have been made to trace the person who was by the side of the cart and who stated to P. W. 6 that there was a dead body on the cart. P. W. 6 has no doubt stated that he is not able to identify him and there may have been consequent difficulty. But one cannot help feeling that some further vigorous efforts might have helped to secure that person to be available either as a witness or as a co-accused.

Panigrahi, J.

13. I agree.

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